IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL WRIT PETITION NO. 256 OF 2015

Jivraj s/o Maroti Dhakane ...Petitioner

VERSUS

The State of Maharashtra,
through Police Inspector,
Ambejogai (Rural) Police Station,
Taluka Ambejogai, Dist. Beed ...Respondent

.....

Shri Rajendra S. Deshmukh, advocate for petitioner
Shri V.H.Dighe, A.P.P. for respondent

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CORAM : V.M.DESHPANDE, J.

DATED : 25th February, 2015

O R D E R :-

1] Heard Shri Rajendra S. Deshmukh, learned counsel for the petitioner in extenso. With his able assistance, I have gone through the impugned orders passed by the learned Magistrate and by the learned Revisional Court. He also invited my attention to the evidence adduced by the prosecution witnesses in Regular Criminal Case No. 158 of 2013.

2] The challenge in the present Writ Petition is to the order, passed by the learned Judicial Magistrate, First Class (Court No.2), Ambejogai, below Exh.1 in Regular Criminal Case No. 158 of 2013, together with the judgment and order, passed by the learned Additional Sessions Judge, Beed.

By the said, the learned Magistrate, while exercising powers under Section 319 of the Code of Criminal Procedure, issued process against the present petitioner for the offences punishable under Sections 406, 420, 467, 468, 471, 472 r/w 34 of the Indian Penal Code. The Revisional Court dismissed the Revision filed on behalf of the petitioner and confirmed the order of issuance of process passed by the learned Magistrate.

3] The submission of the learned counsel for the petitioner is that the order of issuance of process is outcome of perverse approach on the part of the learned Magistrate. He submitted that there is no material on record worth to consider against the petitioner warranting the learned Magistrate to exercise powers under Section 319 of the Criminal Procedure Code. He submitted that, in fact, it is the petitioner who has set the criminal law into motion and was interested in securing the conviction of the real culprits.

4] When the petitioner was a Chairman of Seva Sahkari Society Aswalamba, which is affiliated to Beed District Central

Cooperative Bank, on 31.10.2012 the said Bank forwarded a list of the persons who have obtained the loan from the said Bank, however, they committed default. He sent the said list to the Talathi in order to ascertain whether the defaulters hold any agricultural field. The Talathi reported back to him that 36 persons do not hold any land.

On 25.2.2013 the petitioner lodged first information report with police station Ambejogai (Rural). The said first information report was recorded as Crime No. 91 of 2013 for the offences punishable under Sections 420, 467, 468, 471, 472, 406 r/w 34 of the Indian Penal Code. The said first information report was lodged against 36 persons. Sum and substance of the first information report was that the accused persons though they were not having any land within the territory of Mauje Aswalamba, they prepared false and forged 7/12 extracts, declaration and guarantee letters and then obtained various loans total amounting to Rs.28,59,616/- and thereby they have cheated the Bank and the Society. Though the first information report was registered against 36 persons, the police arrested only 2 accused out of those 36 accused persons.

After completion of the investigation, charge sheet was filed, however, against most of the accused persons charge sheet was filed under Section 299 of the Criminal Procedure Code.

5] From the judgment of the learned Revisional Court it is clear that only the Bank officers are in jail since May 2013 as under trial prisoners. The judgment further shows that during the trial absconding accused Makrand Jantre and Basling Futke appeared and joined the proceedings.

6] The prosecution examined in all 15 witnesses during the trial before the learned Magistrate. The present petitioner was also examined as prosecution witness no.5. It appears that the arguments of the parties to the trial were also heard. That time, the learned Magistrate came to the conclusion that there is prima facie material against the present petitioner to proceed with, and therefore, the order of issuance of process was passed.

7] The learned counsel for the petitioner did not challenge that the Magistrate has no authority to exercise the powers under Section 319 of the Criminal Procedure Code at that stage.

In fact, the Constitution Bench of the Apex Court in **Hardeep Singh vs State of Punjab**, reported in **2014 CRI.L.J. 1118** has ruled that the word 'course' appearing in Section 319 of the Criminal Procedure Code allows the court to invoke the power to proceed against any person from the initial stage of inquiry up to the stage of conclusion of the trial.

8] The learned trial court found that, in the evidence of PW 8 Keshav Aghav, who is the Assistant Manager of Beed District Central Cooperative Bank and Omprakash Kulkarni (PW 13), Branch Manager of the Beed District Central Cooperative Bank, sufficient material is appearing to connect the present petitioner in the crime.

When the present petitioner was facing cross-examination from the arrested accused in the trial, he has denied his signatures on the documents namely the demand letter given to the Bank from the society. However, PW 8 Keshav Aghav in clear terms has stated that those documents bear the signature of the present petitioner.

Further Branch Manager Omprakash Kulkarni (PW 13) has explained the procedure at the time of sanction of the loan. His evidence would reveal that along with the demand letter the Secretary and the Chairman are required to submit necessary documents. Those are submitted to the Bank after its scrutiny. He has stated in his evidence as under : -

> " कागदपत्रांची संपूर्ण तपासणी झाले नंतर सचिव व चेअरमन कर्ज प्रस्ताव बँकेत दाखल करीत असतो.”

There is no dispute that during the disputed period present petitioner was the Chairman.

9] From the evidence of the investigating officer, it is clear that he found the signature of the present petitioner on various loan proposals which are Article Nos. 169, 170, 173, 174, 175, 176 and 177.

Submission is made on behalf of the petitioner that the investigating officer did not send those Articles to ascertain his signature. It is to be noted that during the course of the investigation, it appears that the petitioner has not disputed his signature, and therefore, the investigating officer has stated in his evidence as under :-

> " आवश्यकता न भासल्याने वरील चेअरमनच्या सह्या हस्ताक्षर तज्ञांकडे तपास कामी पाठविल्या नाहीत. आवश्यकता न वाटल्याने फिर्यादीचे नैसर्गिक सह्याचे नमुने फिर्यादीकडून जप्त केले नाही. "

10] In paragraph 50 of the judgment in the case of **Hardeep Singh** (cited supra), the Apex Court has observed as under : -

> " 50. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor the legislature could have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court

> those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 Cr.P.C.
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> Accordingly, we hold that the court can exercise the power under Section 319 Cr.P.C. only after the trial proceeds and commences with the recording of the evidence and also in exceptional circumstances as explained herein above. ”

11] From the available material on record, it is clear that the petitioner, who is a Chairman of the society is the person through whom the loan proposals are routed to the Bank. His evidence would reveal that he is the Head of Seva Sahkari Society and the Secretary is the employee. The Secretary of the Society is still absconding. The evidence of the petitioner recorded during the trial shows that he has blamed his Secretary for everything.

The available evidence and material clearly permits the court to take a view that the petitioner is directly responsible for the loan transaction.

12] Thus, from the material on record, it is clear that when the court is of the opinion that there appears some evidence pointing out to the complicity of the present petitioner, the learned trial Magistrate was well within his right in exercising powers under Section 319 of the Criminal Procedure Code. Therefore, I see no illegality or infirmity in the order passed by the courts below warranting interference at this stage. Hence, the Writ Petition is dismissed.

[V.M.DESHPANDE, J.]

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